

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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TERENCE FAIR,

Plaintiff,

v.

NEVADA STATE, *et al.*,

Defendants.

Case No. 2:22-cv-00603-GMN-EJY
ORDER DISMISSING AND CLOSING
CASE

Plaintiff Terence Fair brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison. (ECF No. 1-1). On April 19, 2022, this Court ordered Fair to file a fully complete application to proceed *in forma pauperis* (“IFP”) or pay the full \$402 filing fee by June 20, 2022. (ECF No. 3). That deadline expired and Fair did not apply to proceed IFP, pay the full \$402 filing fee, or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440–41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives. See *In re*

1 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
2 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

3 The first two factors, the public's interest in expeditiously resolving this litigation
4 and the Court's interest in managing its docket, weigh in favor of dismissing Fair's claims.
5 The third factor, risk of prejudice to defendants, also weighs in favor of dismissal because
6 a presumption of injury arises from the occurrence of unreasonable delay in filing a
7 pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
8 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
9 cases on their merits—is greatly outweighed by the factors favoring dismissal.


10 The fifth factor requires the Court to consider whether less drastic alternatives can
11 be used to correct the party's failure that brought about the Court's need to consider
12 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
13 that considering less drastic alternatives *before* the party has disobeyed a court order
14 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
15 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
16 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's
17 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled
18 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).
19 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
20 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
21 F.2d 1421, 1424 (9th Cir. 1986). This Court cannot operate without collecting reasonable
22 fees, so this action cannot proceed until Fair either files a fully complete IFP application
23 or pays the \$402 filing fee for a civil action. The only alternative to dismissal here is to
24 enter a second order setting another deadline. But the reality of repeating an ignored
25 order is that it often only delays the inevitable and squanders the Court's finite resources.
26 The circumstances here do not indicate that this case will be an exception: Fair has not
27 stated that he needs additional time and there is no evidence he did not receive the
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1 Court's order. Setting another deadline is not a meaningful alternative given these
2 circumstances. So the fifth factor favors dismissal.

3 **II. CONCLUSION**

4 Having thoroughly considered these dismissal factors, the Court finds that they
5 favor dismissal. It is therefore ordered that this action is dismissed without prejudice
6 based on Fair's failure to either file a fully complete application to proceed *in forma*
7 *pauperis* or pay the full \$402 filing fee in compliance with this Court's April 19, 2022, order.
8 The Clerk of Court is directed to enter judgment accordingly and close this case. No other
9 documents may be filed in this now-closed case. If Fair wishes to pursue his claims, he
10 must file a complaint in a new case.

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12 DATED THIS 6th day of August 2022.

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16 UNITED STATES DISTRICT JUDGE
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